

1 Lenore Silverman, SBN 146112
lsilverman@fagenfriedman.com
2 Kimberly A. Smith, SBN 176659
ksmith@fagenfriedman.com
3 FAGEN FRIEDMAN & FULFROST, LLP
6300 Wilshire Boulevard, Suite 1700
4 Los Angeles, California 90048
Phone: 323-330-6300
5 Fax: 323-330-6311

6 Attorneys for SAN FRANCISCO
UNIFIED SCHOOL DISTRICT
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**
10

11 A.B. a minor, By and Through W.F.B.,
His Guardian Ad Litem,

12 Plaintiff,

13 vs.
14

15 SAN FRANCISCO UNIFIED
SCHOOL DISTRICT,

16 Defendant.
17

CASE NO. C 07 4738 PJH

**DEFENDANT SAN FRANCISCO
UNIFIED SCHOOL DISTRICT'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

18 COMES NOW Defendant San Francisco Unified School District ("District"),
19 and for itself only, hereby answers the Complaint filed by plaintiff A.B.
20 ("Plaintiff"), and asserts its affirmative defenses as follows:

21 **PRELIMINARY STATEMENT**

22 1. In response to paragraph 1 of the Complaint, the District admits that
23 this action is brought pursuant to section 1415(i)(2)(A) of Title 20 of the United
24 States Code (the Individuals with Disabilities Education Act or "IDEA") and that a
25 hearing decision was rendered by the California Office of Administrative Hearings
26 on or about June 18, 2007. The District denies that Plaintiff has been aggrieved by
27 said hearing decision. The District is without sufficient knowledge to admit or deny
28

1 the allegation that Plaintiff received the hearing decision on or about June 25, 2007,
2 and, on that basis, denies the allegation.

3 JURISDICTION AND VENUE

4 2. In response to paragraph 2 of the Complaint, the District admits each
5 and every allegation contained therein.

6 3. In response to paragraph 3 of the Complaint, the District admits each
7 and every allegation contained therein.

8 PARTIES

9 4. In response to paragraph 4 of the Complaint, the District admits each
10 and every allegation contained therein.

11 5. In response to paragraph 5 of the Complaint, the District admits that it
12 is a public entity organized and existing under the laws of the State of California,
13 with the capacity to be sued. The District further admits that it receives federal fund
14 pursuant to the Individuals with Disabilities Education Act ("IDEA") and is required
15 to provide a free and appropriate public education ("FAPE") to all students residing
16 in the District's boundaries who are found eligible to receive a special education and
17 related services. Except as specifically admitted, the District denies each and every
18 allegation contained in paragraph 5.

19 STATUTORY SCHEME UNDER IDEA

20 6. In response to paragraph 6 of the Complaint, the District notes that it
21 contains no factual averments to which the District must respond and merely sets
22 forth Plaintiff's summary of the law which speaks for itself.

23 7. In response to paragraph 7 of the Complaint, the District notes that it
24 contains no factual averments to which the District must respond and merely sets
25 forth Plaintiff's summary of the law which speaks for itself.

26 8. In response to paragraph 8 of the Complaint, the District notes that it
27 contains no factual averments to which the District must respond and merely sets
28 forth Plaintiff's summary of the law which speaks for itself.

STATEMENT OF RELEVANT FACTS

9. In response to paragraph 9 of the Complaint, the District admits each and every allegation contained therein.

10. In response to paragraph 10 of the Complaint, the District admits each and every allegation contained therein.

11. In response to paragraph 11 of the Complaint, the District admits each and every allegation contained therein.

12. In response to paragraph 12 of the Complaint, the District admits that "Extended School Year" is a term of art based on qualifying factors that may entitle a student to receive educational services beyond the regular school year. The services are typically but not always delivered during the summer. Except as specifically admitted, the District denies each and every allegation contained in paragraph 12.

2003-2004 school year (2nd Grade)

13. In response to paragraph 13 of the Complaint, the District admits each and every allegation contained therein.

14. In response to paragraph 14 of the Complaint, the District is without sufficient knowledge to admit or deny the allegations and, on that basis, denies each and every allegation contained therein.

15. In response to paragraph 15 of the Complaint, the District admits each and every allegation contained therein.

16. In response to paragraph 16 of the Complaint, the District admits that the ALJ found a need to assess based on behavioral issues occurring during about a quarter of the 2003-2004 school year. Except as specifically admitted, the District denies each and every allegation in paragraph 16.

///

///

///

1 assessed by Dr. Tina Guterman in approximately June of 2005. Except as
 2 specifically admitted, the District denies each and every allegation in paragraph 25.

3 26. In response to paragraph 26 of the Complaint, the District denies each
 4 and every allegation contained therein.

5 27. In response to paragraph 27 of the Complaint, the District admits each
 6 and every allegation contained therein.

7 28. In response to paragraph 28 of the Complaint, the District admits that
 8 the prior written notice provided for the 2005 extended school year did not
 9 individually address each service requested by W.F.B. Except as specifically
 10 admitted, the District denies each and every allegation contained in paragraph 28.

11 29. In response to paragraph 29 of the Complaint, the District admits each
 12 and every allegation contained therein.

13 30. In response to paragraph 30 of the Complaint, the District admits each
 14 and every allegation contained therein.

15 *2005-2006 school year (4th Grade)*

16 31. In response to paragraph 31 of the Complaint, the District admits that
 17 A.B.'s parent provided him with privately funded services in the areas of speech and
 18 language therapy, behavioral therapy, social skills therapy, interactive metronome
 19 therapy, music therapy and sessions at Lindamood-Bell during the 2005-2006
 20 school year. The District further admits that A.B. was privately assessed in the area
 21 of occupational therapy during the 2005-2006 school year. Except as specifically
 22 admitted, the District denies each and every allegation in paragraph 31.

23 32. In response to paragraph 32 of the Complaint, the District admits each
 24 and every allegation contained therein.

25 33. In response to paragraph 33 of the Complaint, the District admits each
 26 and every allegation contained therein.

27 ///

28 ///

34. In response to paragraph 34 of the Complaint, the District admits that the ALJ found that the FBA was inappropriate and untimely but that it was unnecessary because Student no longer exhibited behaviors that requires the assessment. Except as specifically admitted, the District denies each and every allegation contained in paragraph 34.

35. In response to paragraph 35 of the Complaint, the District admits each and every allegation contained therein.

36. In response to paragraph 36 of the Complaint, the District admits each and every allegation contained therein.

37. In response to paragraph 37 of the Complaint, the District admits that the ALJ found the last IEP contained no written description for the 2006 ESY but that there was no denial of FAPE because A.B.'s parents had actual knowledge of, understood and considered the District's offer. Except as specifically admitted, the District denies each and every allegation contained in paragraph 37.

38. In response to paragraph 38 of the Complaint, the District admits each and every allegation contained therein.

39. In response to paragraph 39 of the Complaint, the District admits that it did not provide a prior written notice for the psychological evaluation. Except as specifically admitted, the District denies each and every allegation contained in paragraph 39.

2006-2007 school year (5th Grade)

40. In response to paragraph 40 of the Complaint, the District admits each and every allegation contained therein.

41. In response to paragraph 41 of the Complaint, the District denies each and every allegation contained therein.

42. In response to paragraph 42 of the Complaint, the District denies each and every allegation contained therein.

1 43. In response to paragraph 43 of the Complaint, the District admits each
2 and every allegation contained therein.

3 44. In response to paragraph 44 of the Complaint, the District admits each
4 and every allegation contained therein.

5 45. In response to paragraph 45 of the Complaint, the District admits each
6 and every allegation contained therein.

7 46. In response to paragraph 46 of the Complaint, the District admits each
8 and every allegation contained therein.

9 47. In response to paragraph 47 of the Complaint, the District admits each
10 and every allegation contained therein.

11 **CAUSE OF ACTION**

12 **(20 U.S.C. § 1415)**

13 **(Claim For Relief against DISTRICT)**

14 48. In response to paragraph 48 of the Complaint, the District denies each
15 and every allegation contained therein.

16 49. In response to paragraph 49 of the Complaint, the District denies each
17 and every allegation contained therein.

18 50. In response to paragraph 50 of the Complaint, the District denies each
19 and every allegation contained therein.

20 51. In response to paragraph 51 of the Complaint, the District denies each
21 and every allegation contained therein.

22 52. In response to paragraph 52 of the Complaint, the District denies each
23 and every allegation contained therein.

24 53. In response to paragraph 53 of the Complaint, the District denies each
25 and every allegation contained therein.

26 54. In response to paragraph 54 of the Complaint, the District denies each
27 and every allegation contained therein.

28

1 55. In response to paragraph 55 of the Complaint, the District denies each
2 and every allegation contained therein.

3 56. In response to paragraph 56 of the Complaint, the District denies each
4 and every allegation contained therein.

5 6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

9 57. Plaintiff's claim for relief under the IDEA fails to state a claim upon
10 which relief may be granted against the District.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Failure to Exhaust Administrative Remedies)**

13 58. Plaintiff is barred from relief under the Complaint as to any claim
14 which was not addressed by the administrative law judge, based on his failure to
15 fully exhaust administrative remedies.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Discharge of Obligations)**

18 59. Plaintiff is barred from relief under the Complaint because, prior to the
19 commencement of this action, the District paid, satisfied or otherwise discharged all
20 duties and obligations owed to Plaintiff under applicable federal and state laws
21 including the IDEA and/or the California Education Code.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Damages Not Recoverable)**

24 60. Plaintiff's Complaint seeks damages not properly recoverable against
25 the District.

26 ///

27 ///

28 ///

FIFTH AFFIRMATIVE DEFENSE

(Immunity and Privilege)

61. Plaintiff is barred from asserting the claims alleged in the Complaint against the District as District's actions were, at all times, privileged, immune, justified, made in good faith and/or otherwise lawful.

SIXTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

62. Plaintiff has had, and continues to have, the ability and opportunity to mitigate the damages alleged in the Complaint and has failed to take reasonable and necessary steps to mitigate same.

SEVENTH AFFIRMATIVE DEFENSE

(Plaintiff Is Not Prevailing Party)

63. Plaintiff is not entitled to an award of attorney's fees against the District as he is not the prevailing party in the underlying due process proceeding and the District prevailed on all significant issues in the underlying action.

EIGHTH AFFIRMATIVE DEFENSE

(Attorney's Fees Not Available)

64. Plaintiff is not entitled to a full award of attorney's fees and costs associated with the underlying administrative hearing and/or this civil action based on Plaintiff's failure to obtain affirmative relief which materially altered the relationship between the parties and/or based on the District's statutory offers to Plaintiff.

///

///

///

NINTH AFFIRMATIVE DEFENSE

(Other Defenses)

65. The District presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, yet unasserted, affirmative defenses. The District therefore reserves the right to assert additional affirmative defense in the event discovery indicates it would be appropriate.

PRAYER

WHEREFORE, the District prays for judgment as follows:

1. That Plaintiff take nothing by way of their Complaint;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That District recover its attorney's fees and expenses incurred herein;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

DATED: November 8, 2007

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: /s/ Kimberly A. Smith

Kimberly A. Smith

Attorneys for SAN FRANCISCO

UNIFIED SCHOOL DISTRICT